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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Afghanistan submitted by Mr. Felix Ermacora, Special Rapporteur, in accordance with Commission on Human Rights resolution 1991/78

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Introduction

1. The Special Rapporteur to examine the question of human rights in Afghanistan was first appointed in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37. The mandate of the Special Rapporteur has been renewed regularly since then by resolutions of the Commission which were endorsed by the Economic and Social Council, with the request that he report to the Commission on Human Rights and to the General Assembly. So far, he has submitted seven reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/2, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25 and E/CN.4/1991/31) and seven to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664 and A/46/606).

2. In November 1991, pursuant to Commission on Human Rights resolution 1991/78 and Economic and Social Council decision 1991/259, which extended his mandate for another year, the Special Rapporteur submitted an interim report (A/46/606) to the General Assembly containing preliminary conclusions and recommendations. Having taken note with appreciation of the report, the General Assembly adopted resolution 46/136 of 17 December 1991 in which it decided to keep under consideration, during its forty-seventh session, the situation of human rights in Afghanistan in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

3. The Special Rapporteur has the honour to submit his final report, contained in the present document, to the Commission on Human Rights, in accordance with his mandate. It describes the most important new elements which, in the opinion of the Special Rapporteur, have affected the situation of human rights since his interim report (A/46/606) was presented to the General Assembly in November 1991; the present update should therefore be considered together with the interim report.

4. In keeping with the approach which he has always followed in the matter, the Special Rapporteur carried out two visits to the area during the period of his present mandate in order to obtain the most broadly based information possible. The first visit took place from 10 to 22 September 1991 (Pakistan from 10 to 17 and Afghanistan from 17 to 21 September 1991; on 13 September 1991 the Special Rapporteur visited areas in Afghanistan controlled by opposition forces in Nangarhar Province), and its findings are reflected in the interim report to the General Assembly (A/46/606). The second visit of the Special Rapporteur took place from 29 December 1991 to 5 January 1992 (Pakistan from 29 December 1991 to 2 January 1992 and Afghanistan from 2 to 5 January 1992), with a view to gathering up-to-date information for the purposes of the present report. In addition, the Special Rapporteur also heard testimonies and held consultations relating to his mandate in Europe, in July and December 1991.

5. During his last visit to Pakistan, the Special Rapporteur was received in Islamabad by the Chief Commissioner for Afghan Refugees. He also met with high-ranking officials of the Ministry for Foreign Affairs.

6. In the North West Frontier Province, the Special Rapporteur had talks with Prof. Burhanudddin Rabbani, Minister for Foreign Affairs of the so-called Afghan Interim Government (AIG). He also had talks with a member of the Commanders' Shura (council). While in Peshawar, the Special Rapporteur met with representatives of humanitarian organizations and private individuals.

7. The Special Rapporteur also travelled to Miran Shah where he had talks with the head of the Commanders' Shura, Jallaluddin Haqqani, and interviewed prisoners taken in the battle of Khost. He also met with the leader of one of the opposition parties based in Peshawar, Gulbuddin Hekmatyar. During these consultations, the Special Rapporteur exchanged views on the overall situation in Afghanistan, with particular reference to human rights issues and the situation of prisoners.

8. During his last visit to Afghanistan, in accordance with the schedule established in consultation with the Afghan authorities, the Special Rapporteur was received by the President of Afghanistan, the President of the High Court of Appeal, the Minister of Labour and Social Affairs, the Minister of the Interior, the Minister for Repatriates Affairs, the Chief Justice, the Deputy Minister for Foreign Affairs and the First Deputy Minister for State Security. In addition, he had talks with representatives of the commission in charge of supervising the situation of prisoners. The Special Rapporteur also met with the President and representatives of the Association of Afghan Lawyers.

9. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi central prison.

10. The Special Rapporteur wishes once again to express his sincere appreciation for the valuable assistance and full cooperation he has received from the Afghan and Pakistani authorities. In this respect, he also wishes to thank the Office for the Coordination of United Nations Humanitarian and Economic Assistance Programmes relating to Afghanistan (UNOCA) for its most efficient logistical assistance without which his visit would not have been possible.

11. Chapter I of the present report contains general observations concerning the situation of human rights in Afghanistan during the period October 1991 to January 1992. Chapter II describes specific human rights problems, with special emphasis placed on the situation of refugees and prisoners, which the Special Rapporteur continues to consider as paramount human rights problems. It also considers the human rights situation in Government-controlled areas and in areas not under government control, human rights in the light of the armed conflict, civil and political rights, as well as the question of economic, social and cultural rights. In addition, it examines the question of self-determination in the light of a possible political settlement of the Afghan question. Chapter III contains the conclusions and recommendations which the Special Rapporteur has drawn from the analysis of the supplementary information he has recently gathered.

12. In addition to gathering information during the visits to Pakistan and Afghanistan and to the consultations he had in Europe with a view to informing the Commission on Human Rights and the General Assembly in the most impartial and objective manner possible, the Special Rapporteur has followed the course

of events throughout the period covered by this report, i.e. since the extension of his mandate in March 1991, and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations.

13. In preparing this report, the Special Rapporteur has consulted various reports prepared by United Nations bodies and specialized agencies, as well as those by non-governmental organizations, dealing with the humanitarian and human rights aspect of the Afghan problem. In this context, he would like to refer to two recent publications, namely "Untying the Afghan Knot: Negotiating Soviet Withdrawal" by Riaz Mohammad Khan, 1991 and "The Silent Soldier: The Man Behind the Afghan Jehad" by Brigadier (Retd.) Mohammad Yousaf, 1991.

I. GENERAL OBSERVATIONS CONCERNING THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

14. The Special Rapporteur has placed the situation of human rights in Afghanistan within the context of the overall political developments affecting the country. In 1991, these developments have included the statement on Afghanistan issued by the United Nations Secretary-General on 21 May 1991, which contained a five-point peace plan (see document A/46/606, annex I), the Joint Declaration of Islamabad of 30 July 1991 (A/46/606, annex II) and the Joint Declaration of Tehran of 29 August 1991 (A/46/606, annex III). In addition, the Special Rapporteur took note of the joint statement of the United States and the Soviet Union of 13 September 1991 on the simultaneous cut-off of weapons deliveries to the Afghan parties by 1 January 1992 (the so-called "negative symmetry"). The Special Rapporteur also took note of the report of the Secretary-General on Afghanistan to the General Assembly at its forty-sixth session (A/46/577-S/23146).

15. Political developments which should be taken into account when considering the human rights situation in Afghanistan took place in late 1991. From 11 to 15 November 1991 a delegation of Afghan mujahidin met in Moscow with representatives of the Union of Soviet Socialist Republics and of the Russian Federation. A joint statement was issued on the occasion of this visit (see annex I). In December 1991, the Organization of the Islamic Conference adopted a resolution on Afghanistan. At the invitation of the Government of Pakistan, a delegation of the Russian Federation, headed by Mr. A.V. Rutskoi, visited Pakistan from 19 to 22 December 1991. A joint communiqué concerning this visit was issued on 22 December 1991 (see annex II). All of these texts contain elements concerning human rights.

16. The joint statement of the Soviet Union, the Russian Federation and the Afghan Mujahidin contains the following references to human rights:

> "1. The Soviet invasion of Afghanistan and its participation in the war, which brought and is bringing unlimited sufferings to the Muslim people of Afghanistan, was condemned and acknowledged as anti-constitutional acts."
>
> "3. The Mujahideen delegation announcement that General Elections will be held in Afghanistan within a period of two years from the moment of transfer of power from Kabul regime to the Interim government. These elections will be held under the aegis of the OIC and UNO."
>
> "5. Both sides agreed to make all possible efforts for release of the POWs. Out of their efforts for peace, Mujahideen will take measures for release of First Group of the Soviet POW before 1 January 1992. The necessary practical measures to be taken for implementation of such a decision will be carried out by a Joint Commission."
>
> "7. The Soviet Union will take necessary part in common efforts for the re-habilitation of destruction caused by the war."

17. The Organization of the Islamic Conference, in its resolution concerning Afghanistan, made the following reference to human rights:

> "4. Recognizes that the formation of a broad-based Government is essential for the restoration of peace and for enabling the people of Afghanistan to exercise their right to choose their own political, economic and social system free from outside intervention;"
>
> "5. Calls for the creation of the necessary conditions so that Afghan refugees would return to their home;"
>
> "12. Decides to continue generous humanitarian assistance to the Afghan refugees and to work for their repatriation and rehabilitation in Afghanistan in cooperation with the Islamic Republic of Pakistan and the Islamic Republic of Iran;"
>
> "13. Renews its call to all States as well as national and international organizations to extend assistance to alleviate the suffering of Afghan refugees."

18. In their joint communiqué, the Governments of Pakistan and the Russian Federation expressed their commitment to a speedy political settlement of the Afghan problem and recognized the fundamental right of the Afghan people to determine their destiny free from outside interference. They also welcomed the five-point peace plan formulated by the Secretary-General and emphasized the need for the early voluntary return of the 5 million Afghan refugees living in Pakistan and the Islamic Republic of Iran to their homeland in safety and with honour. The following passage refers to prisoners of war:

> "Recognizing the inadmissibility of using prisoners of war for political purposes, the two sides resolved to make every effort that all POWs in Afghanistan would be freed in the near future on the basis of humanitarian considerations."

19. The Special Rapporteur has noted that these political texts do not refer explicitly to the human rights situation in Afghanistan; however, they do contain important elements concerning human rights, mainly those of refugees and prisoners of war.

20. The various commentaries these statements have prompted in different quarters demonstrate that there is a potential danger that the envisaged political solution may not meet the necessary requirement of clarity and may therefore give rise to misunderstandings.

21. The Special Rapporteur is concerned that the envisaged political solution of the Afghan conflict may minimize its human rights aspect.

22. It should be borne in mind that certain human rights problems in Afghanistan are a consequence of the military and political situation while others have to be understood in a separate, purely human rights context. The

military aspects of the conflict concern human rights, particularly the right to life. These are characterized by the waging of holy war (jehad), rocket and artillery attacks, the placing of mines, the number of death sentences which have been handed down and the number of mass executions that have taken place.

23. The conflict also concerns the exercise of the right to self-determination by the Afghan people. Economic and social rights are also affected by the conflict in view of the widespread destruction and the economic situation in which all Afghans find themselves, whether they live in urban or rural areas, whether these areas are controlled by the Government or by the opposition, or whether they live in refugee camps.

24. The Special Rapporteur is of the opinion that only a negotiated political solution that is not imposed on the Afghan people can change the human rights situation for the better. Efforts undertaken by the Government alone to improve the human rights situation should be welcomed but they cannot be regarded as exhaustive because the principal human rights issues are a direct consequence of the conflict and can only be solved if the nature of the conflict is altered. The conflict should become a political one bound by the rules of democracy; only this can guarantee the enjoyment of human rights.

25. When the adversaries of the present Government claim that a negotiated solution to the conflict may lead to compromises which could be incompatible with the goals of the jehad or that it would be immoral to negotiate with those whom they hold partly responsible for the outbreak of the conflict, significant changes in the human rights situation cannot be expected. Certain experts hold the view that as long as the city of Kabul is not taken by opposition forces, the present Government will continue to be a political reality. A change in this situation would either have to result in political compromise or in a military victory by the opposition forces. In any event, human rights should be an essential element in whatever solution might emerge.

26. Despite the fact that the current Government is recognized by the international community as the legal authority in the country, it must be borne in mind that in practice it does not control the totality of the country's territory. As regards the responsibility of the Government for the human rights situation in areas which it does control, the Special Rapporteur has always endeavoured to distinguish clearly between acts which can be imputed to the Government and those imputable to the opposition forces. The most ferocious and intensive armed conflict is waged in certain regions of Afghanistan between rival groups belonging to the political parties of the opposition. This was and still is the case in Kunar Province which the Special Rapporteur had the occasion to visit in September 1990. This province was originally administered by three groups, one belonging to the Afghan Interim Government (AIG), Hezb-e-Islami Afghanistan (headed by Gulbuddin Hekmatyar) and the Salafis (also known as Wahabis). When the administration run by the AIG left the province, the Salafis and Hezb-e-Islami confronted each other in the most ruthless manner. Numerous persons lost their lives as a result of this conflict. Finally, Maulawi Jamil-ur-Rahman, the Salafi

leader, was assasinated on 30 August 1991. These developments have been carefully documented in issue 125-126 of the Monthly Bulletin published by the Afghan Information Centre.

27. Considerations of this sort should be borne in mind when the human rights situation in Afghanistan is examined. There are certain human rights issues for which the present Government is only indirectly responsible. They are the result of actions initially undertaken by the former Government and the occupying forces of the Union of Soviet Socialist Republics.

II. SPECIFIC HUMAN RIGHTS PROBLEMS IN AFGHANISTAN

A. The refugee situation

28. The human rights of Afghan refugees have always been of particular concern to the Special Rapporteur. This concern is also expressed in the Geneva Agreements of April 1988 (i.e. the Agreements on the Settlement of the Situation Relating to Afghanistan) a section of which deals with the voluntary return of refugees as well as in the pronouncements of all international organizations on the matter. Reference to the situation of refugees is also made in "Untying the Afghan Knot: Negotiating Soviet Withdrawal" by Riaz Mohammad Khan. The fundamental rights and human dignity of refugees are particularly endangered by the circumstances in which they find themselves and by the life they are obliged to lead. The situation of refugees is always precarious, even in cases when a Government such as that of Pakistan uses all the means at its disposal to cope with the situation of these refugees in conjunction with the assistance provided by the international community and United Nations agencies, in particular the World Food Programme and the Office of the United Nations High Commissioner for Refugees (UNHCR).

29. The information provided by the Chief Commissioner for Afghan Refugees of Pakistan and by the UNHCR shows that the total number of Afghan refugees in Pakistan and the Islamic Republic of Iran is still more than 5 million, 3.2 million of whom live in Pakistan. It is estimated that since the outbreak of the Afghan conflict more than 700,000 children have been born in refugee camps.

30. In the global context of human rights, the problem of internally displaced persons within Afghanistan should not be overlooked.

31. The economic situation of the refugees - particularly of those who are not employed, i.e. mostly women and children - depends on the host countries and on the international community. The year 1991 saw a reduction in the ration scale for wheat and edible oil distributed to refugees, while the distribution of other food commodities such as milk, sugar and tea has stopped altogether. This has had an important impact on the local market. The programme of Operation Salam (Office for the Coordination of United Nations Humanitarian and Economic Assistance Programmes Relating to Afghanistan) for 1992 describes the needs of large-scale repatriation (see pages 59-63). The requirements for the refugees in terms of food items for 1992 are considered by the Government of Pakistan on a reduced scale as follows: wheat, 469,030 metric tons; edible oil, 23,450 metric tons; DSM, 31,267 metric tons; sugar, 23,450 metric tons and tea, 1,760 metric tons. The daily ration of wheat has been reduced from 500 grams to 400 grams.

32. The medical care and educational programmes for refugees depend on the strength and financial resources at the disposal of the political parties they belong to, as the parties have divided the refugee population between them. The most vulnerable segment of the refugee population is composed of women and children. They are not only dependent on men, but are increasingly subjected to restrictions which are inherent in refugee life as such. At the end of November 1991 flyers were posted in public places in Peshawar urging the

refugee community to stop activities which go against Sharia. It states, inter alia, "... no woman or young girl should be with foreigners or work in non-Islamic organizations and even go to these places. If actions are repeated, the men of the family - fathers, uncles, brothers, etc - those directly responsible for the family, will get the punishment if they don't obey this ... This is the final request - correct your habits; otherwise, according to the Islamic code, we will resolve it". (see annex III). The situation of refugees raises problems of the enforcement of law and order and gives rise to unrest among the refugee population.

33. The voluntary repatriation project undertaken jointly by the Government of Pakistan and the UNHCR has so far not resulted in a massive return, as expected and foreseen by the Geneva Agreements. The Chief Commissioner for Afghan Refugees of Pakistan has indicated that 247,801 ration cards have been returned to the authorities since the launching of this programme. However, the number of ration cards which have been returned does not necessarily correspond to the actual number of refugees who have returned to Afghanistan. This information can be provided more accurately by the Afghan authorities. The Minister for Repatriate Affairs of Afghanistan stated that 56,199 persons had returned to Afghanistan between March and December 1991. Between September 1991 and January 1992, 27,242 persons returned, of whom 10,274 came from the Islamic Republic of Iran and 16,828 from Pakistan.

34. Within the scope of the limited financial resources available to them and the circumstances of war, the Afghan authorities are doing their best to facilitate the economic, legal and educational integration of the returnees into Afghan society. Returnees from Pakistan usually try to reach the provinces close to the border through their own means. Refugees returning from Iran are temporarily accommodated in guest houses in Herat. The Afghan authorities are currently facing considerable difficulties regarding their transport to their places of origin. At the beginning of January 1992 there were approximetely 4,000 returnees from Iran who had been waiting for a month in a guest house in Herat owing to a lack of adequate transport facilities.

35. It has been estimated that two cargo planes could transport about 400 persons a day, but funds are not available to acquire or charter them. The Afghan Government is currently not sending returnees to the northern provinces by land transport due to fear of harassment by opposition forces. Should large-scale repatriation take place, the Government of Afghanistan has estimated that approximately $US 100 million would be required to cover the basic needs in terms of household items of approximately 620,000 families.

B. Human rights in the context of the armed conflict and of the unrest prevailing in certain parts of the country

36. The overall situation concerning control over the country's territory has not altered since the publication of the Special Rapporteur's interim report to the General Assembly (A/46/606, paras. 40-44). Owing to time constraints during his last mission the Special Rapporteur was unable to visit areas in Afghanistan not under Government control. However, oral reports indicate that functioning civilian administrations have been established, particularly in Wardak province and the northern parts of the country which are not under the control of the Government. It has been stated that teachers who were formerly

civil servants of the Government have been kept in office. The Special Rapporteur has received the Activity Report for 1990-1991 published by the Afghan Center for Rural Development (ACRD), an Afghan non-governmental organization registered in Peshawar, which provides a detailed account of the agricultural development, livestock and veterinary services, irrigation system, health, education and construction and engineering programmes in Wardak province.

37. Since the publication of the interim report to the General Assembly, the hostilities in the country have diminished. Nevertheless, in September 1991, the city of Jalalabad sustained intensive attacks by opposition forces in which long-range artillery was also employed. Reportedly, 400 persons were killed among whom only four were soldiers. Heavy fighting which has caused numerous casualties among the opposition forces has been reported around opposition outposts near Gardez. According to the information received, in December 1991 rocket attacks by opposition forces killed 20 persons in Kabul and injured more than 50 civilians. In addition, 18 persons were killed and 30 injured in Kandahar, while 20 persons were killed and 50 injured in Nangrahar. Subsequent to the entry into force on 1 January 1992 of the agreement reached by the Union of Soviet Socialist Republics and the United States of America on 13 September 1991 to cut off arms supplies to all Afghan parties, no rocket attacks whatsoever have been reported.

38. The Afghan Minister of the Interior indicated that from 21 March to 27 December 1991, 169 persons were killed and 404 injured as a result of rocket attacks, which the Special Rapporteur considers to be terrorist acts under Additional Protocol I to the Geneva Conventions of 1949.

39. The problem of mines remains one of the main concerns as it is closely linked with the right to life. The Special Rapporteur is pleased to report that the Afghan Government has now, for the first time, handed over Soviet mine field plans to the United Nations. The Operation Salam programme for 1992 contains a survey of mine clearance carried out in 1991 (pages 19 and 20). The Afghan Government recently informed the Special Rapporteur that the De-mining Commission headed by the Prime Minister is envisaging the establishment of contacts with the competent United Nations bodies concerning mine awareness programmes and de-mining operations. The Minister of the Interior informed the Special Rapporteur about de-mining activities by the Afghan Government in the areas of Kabul and Logar, where 38 villages located along a distance of 160 km had been de-mined. A total of 1,704 mines have been cleared in different provinces and tonnes of explosive and ammunition were removed from these areas. Owing to the deployment of millions of mines throughout the country, these initial efforts and results only constitute a very modest beginning. The "Kabul Times" and The "Journal de Genève" have reported on de-mining activities in Afghanistan in their issues of 22 November 1991 and 11 November 1991 respectively.

40. The Special Rapporteur has provided an account of his visits to various hospitals for war-wounded Afghans after his visit to the region in September 1991 (A/46/606, para. 51). Although he did not visit hospitals during the trip he carried out in December 1991 and January 1992, the Special Rapporteur

was nevertheless informed by the representatives of the International Committee of the Red Cross in Peshawar and Kabul that their hospitals have had a decrease - or at least no increase in the number of patients due to a possible seasonal abatement of military operations.

41. The current situation of human rights in Afghanistan continues to be characterized by unrest in many parts of the country. The power struggle between opposition groups in Kunar province is described at length in the Monthly Bulletin of the Afghan Information Centre (issue covering October, November and December 1991, page 28). The Bulletin also refers to political assassinations: Dr. Abdul Rahman Zamani was wounded on 30 October 1991 near Pabbi, east of Peshawar; an influential elder from Kunar province was killed on 12 November 1991 in the area of Darush (Chitral); Aziz Ahmad Osmani from the International Rescue Committee (IRC) was killed on 25 November 1991 at University Town, Peshawar; on 29 November 1991 an activist of the Afghan Social Democratic Party was killed in lower Tehkal; a leader of the eastern tribes, Mr. Noorullah Khan, was killed on 30 November 1991 in Nauthia, Peshawar; a commander affiliated with the Hezb-e-Islami (Khalis) was killed in early October 1991 in Koh-e-Safi; Maulawi Jamil-ur-Rahman, a Salafi leader, was assassinated in Bajawar on 30 August 1991. These are only a few examples of prominent Afghan leaders and personalities who were killed or wounded, most of them by unidentified persons. It has been alleged that no thorough investigations have been carried out by the competent authorities into these incidents. Reference is also made to an assassination attempt against the former king of Afghanistan, Zaher Shah, that took place in Rome in November 1991.

C. The situation of prisoners of war and of political prisoners

42. The issue of prisoners - prisoners of war, political prisoners and hostages (not including common law prisoners) - is of particular international concern in the complex human rights situation in Afghanistan. While armed conflicts generate prisoners in large numbers, it is certainly against international law to use prisoners or their families for bargaining purposes or as hostages.

43. The joint communiqué issued by Pakistan and the Russian Federation, the joint statement made after the meeting of the Afghan Mujahidin with representatives of the Governments of the Soviet Union and the Russian Federation, and General Assembly resolution 46/136 (paras. 6-9 and 11) all refer to the release or exchange of all prisoners of war and the protection of all prisoners in accordance with humanitarian rules. The persons referred to are those held by the Afghan Government, by political parties of the opposition and by opposition field commanders; a number of Afghan prisoners are also detained by the authorities of Pakistan.

44. It is difficult to assess the number of prisoners in the above-mentioned categories who are currently detained by all sides. Information coming from the Afghan authorities could be checked to a certain extent by the Special Rapporteur and more thoroughly by the International Committee of the Red Cross which now has full access to Afghan prisons both in Kabul and in the

provinces. The Special Rapporteur has received a list of the names of Afghan prisoners detained by the Pakistani authorities from the Pakistani Government. There are also lists of Soviet soldiers whose fate and present whereabouts are unknown. As regards prisoners held by opposition forces, the only information the Special Rapporteur received concerned prisoners taken in the battle of Khost. Approximately 1,700 Afghan soldiers, of whom about 20 per cent were members of the Secret Police, including a number of generals and other high-ranking officers, were said to be held at the time of the Special Rapporteur's visit; approximately 1,000 of them were reportedly released in mid-January 1992.

45. The Special Rapporteur has received the following information from the Afghan Government concerning the exchange of prisoners:

> "Report of the Commission for the Exchange of Prisoners of War on the liberation of officers and soldiers and active members of social organizations, from its inception up to the 14th of Djadi of 1370 (4 January 1992)
>
> The Commission for the Exchange of Prisoners of War has been created pursuant to an order dated 25/10/66 (15 January 1988) of the President of the Republic of Afghanistan, in order to facilitate the return of the members of the armed forces and of the government apparatus to the country. It has been charged with establishing contact and starting negotiations with the commanders of opposition groups in order to exchange prisoners with those belonging to the opposition and who are in the hands of the Government.
>
> From its inception, the Commission has been able to perform its duties successfully, taking into account the circumstances prevailing in the country. These results are as follows:
>
> 1. 3,142 officers have been liberated.
>
> 2. 1,800 soldiers have been liberated.
>
> 3. 204 civilians have been liberated.
>
> The other side has liberated or exchanged 1,231 persons.
>
> Out of 5,146 prisoners belonging to the Government, 106 have been liberated against the payment of 19,810,000 Afghanis to the opposition groups.
>
> Furthermore, since 27/11/67 (16 February 1989), 10 Soviet soldiers and officers who were in the hands of extremist groups have been liberated and handed over to the authority of the Soviet Embassy in Kabul."

46. The legal status of prisoners who were members of the former Soviet armed forces is clear: they are prisoners of war in the meaning of the Third Geneva Convention. In addition, the so-called political prisoners held in Afghan prisons who belonged to the armed forces of the opposition may also be

considered as captured combatants within the meaning of the Geneva Conventions and Additional Protocol I thereto, irrespective of their internal legal status (most of them are considered to be terrorists within the meaning of the Afghan law concerning terrorism).

47. The principal rules applicable to all prisoners are the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

48. A leader of the opposition who is also an eminent Islamic theologian, Professor Burhanuddin Rabbani, told the Special Rapporteur that a principle of Sharia requires that verse No. 40, i.e. the "Shura Sura" of the Holy Koran be respected with regard to clemency in the treatment of prisoners. The verse states "pardon and amnesty is much better than revenge. The pleasure you will derive from pardoning is much greater than for revenge." In addition, Professor Rabbani indicated that a prisoner would be judged according to the law and that there could be no punishment without trial. There should be due process of law and attenuating circumstances would be taken into account. The sentence could be reduced accordingly. He also informed the Special Rapporteur of two sayings by the Holy Prophet: "It is preferable to commit an error in the non-application of the sentence than in its application" (which would imply that it should be applied lightly); and "The smallest evidence which can be used in favour of the criminal should be used so that the sentence is not carried out." Finally, he stated that in Islam, the life of man is priceless, adding that there is a hadith by the Holy Prophet which says "When a person is killed, the wrath of God comes out."

49. As concerns prisoners of war, including combatants, the Third Geneva Convention and the First Additional Protocol apply. The Third Geneva Convention is binding upon the Afghan Government, as it has acceded to the Geneva Conventions of 1949. It is also binding on the participants in the conflict, at least with respect to article 3. The First Additional Protocol states that the general rules of the Conventions are to apply. In any case, the Protocols Additional to the Geneva Conventions of 1949 serve as guidelines for the organs of the United Nations.

50. With regard to prisoners detained in Afghan prisons, the rules contained in articles 42 and 133 of the Afghan Constitution apply. Article 42 states:

> "In the Republic of Afghanistan, punishment incompatible with human dignity, torture and excruciation are prohibited. Obtaining confession, testimony or statement from an accused or any other person by compulsion or threat is prohibited. Statements or testimony taken from an accused or other person by means of compulsion shall not be valid.
>
> A public servant who tortures an accused or any other person for obtaining statements, testimony or confession, or who issues orders for torture, shall be punished in accordance with the law. Acting on the orders of superiors in the commission of unlawful deeds cannot be the ground for the plea of innocence."

Article 133 states:

> "The Republic of Afghanistan respects and observes the United Nations Charter, the Universal Declaration of Human Rights and other accepted principles and norms of international law."

51. The field commanders who are members of the Nationwide Commanders' Shura (Council) stated that they would treat their prisoners humanely. Gulbuddin Hekmatyar, leader of the Hezb-e-Islami Afghanistan party, has issued a written order concerning this matter, the translation of which reads as follows:

> "In the name of God
> Hezb-e-Islami Afghanistan
>
> To all the Commanders of the Hezb-e-Islami Afghanistan, I salute you.
>
> Concerning all the prisoners of war
>
> The following points shall be strictly respected and each and every Mujahed shall be instructed to follow them with the utmost seriousness:
>
> 1. No person is allowed to insult, threaten, harass or murder a prisoner of war.
>
> 2. Concerning food and clothes: Attention shall be paid to ensure that the prisoners of war get the same kind of clothes as the Mujahedin and their food shall also be the same as that of the Mujahedin.
>
> 3. If, in case of acute necessity, the prisoners of war are called to do some work, their working day shall not exceed that of any Mujahed in the centre.
>
> 4. The prisoners of war shall receive the same medical care as the Mujahedin.
>
> 5. Family members are allowed to visit prisoners.
>
> 6. Adequate attention shall be paid to the intellectual development of the prisoners of war.
>
> Wishing you success,
> Respectfully,
> Hekmatyar"

52. The Special Rapporteur is not familiar with the actual treatment of prisoners held by opposition forces. He stated in his interim report to the General Assembly that no atrocities had been reported against prisoners taken after the surrender of Khost, which has also been confirmed by imprisoned Afghan officers. However, there are allegations which the Special Rapporteur has not been able to verify concerning relatives of Secret Police personnel who were allegedly executed on the first day that opposition forces entered

Khost. On the other hand, it has been said that Afghan soldiers have been released in the northern parts of the country after they had been taken by opposition forces.

53. The Special Rapporteur was able to see, near Miranchah, Pakistan, prisoners holding the rank of general and other high-ranking officers, including those belonging to the Secret Police, who were taken during the battle of Khost by the opposition forces led by Commander Haqqani. They appeared to be in good health and were said to be treated in conformity with principles enshrined in the Third Geneva Convention: they were not compelled to work, (art. 50-54), they underwent medical examinations (art. 55), the Detaining Power reported their detention (art. 69), they received a prisoner's capture card (art. 71) and they expected to be released (art. 118). However, conditions appear to be attached to the release of high-ranking officers concerning, inter alia, contacts with their families.

54. On the contrary, the approximately 1,700 soldiers, of whom about 400 were said to belong to the Secret Police, whom the Special Rapporteur was unable to see as they were being held in Afghanistan by the opposition forces, appeared to be forced to work for their captors. The Special Rapporteur did not have the opportunity to examine their working conditions, nor to determine whether they were in conformity with the Third Geneva Convention. He was told that all of those prisoners would soon be liberated. As indicated above, approximately 1,000 prisoners of this group were reportedly freed in Dawara (Paktia province) in mid-January 1992. The International Committee of the Red Cross was able to visit these prisoners once but was unable to repeat these visits owing to particular circumstances. However, ICRC was able to visit a number of prisoners held by other opposition forces regularly.

55. An additional condition for the release of prisoners appears to be whether the prisoner is considered to be a "good Muslim".

56. Since the withdrawal of Soviet troops from Afghanistan in February 1989, the Soviet authorities have claimed that there are numerous Soviet prisoners in the hands of the opposition groups. The discussions concerning these persons have had a considerable political impact, as all the important communiqués and declarations which have been issued since that time refer to the fate of the former Soviet soldiers. Names of missing Soviet military personnel have been handed to the International Committee of the Red Cross as well as to opposition groups. General Assembly resolution 46/136 also refers to their release. Their exact number is not known, nor is it known whether all such personnel taken by opposition forces are still alive: occasionally, one is set free, while others are thought to be dead. Since the dissolution of the Union of Soviet Socialist Republics, there seems to be no centralized body which coordinates the search for these prisoners and which would systematically undertake the necessary measures to obtain their release. In this respect, the conflict has ceased. Article 118 (1) of the Third Geneva Convention reads as follows: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities ... each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation ..." The Special Rapporteur is of the opinion that combatants as defined by article 3 common to the Geneva Conventions are covered by article 118 (1) of the said Conventions on humanitarian grounds.

57. From time to time, all parties to the conflict - opposition parties, commanders and the Afghan Government - select from among their large reserves of prisoners a certain number which are to be released or exchanged. The criteria for selection are either purely political or totally arbitrary.

58. During his last visit to the region, the Special Rapporteur was informed about the release of an American hostage, Mr. Joel DeHart, who had been in the custody of the Afghan Mujahidin for approximately six months. He is said to have been detained in the province of Ghazni by a field commander belonging to the Hezb-e-Islami Afghanistan party. The Special Rapporteur pleaded for his release with Mr. Gulbuddin Hekmatyar, leader of the aforementioned party, on 31 January 1991.

59. Frequent allegations have been made and reports have been received concerning the torture and ill-treatment of prisoners by opposition groups, extrajudicial killings inside Afghanistan and in the border areas of Pakistan, as well as reports of death threats. The Special Rapporteur is of the opinion that such allegations and reports concern the human rights situation in Afghanistan. However, he was unable to verify them in view of the fact that he did not have the possibility of contacting the witnesses mentioned in some of the accounts of such cases.

60. The treatment of political prisoners and prisoners in detention centres run by the Afghan Government will be considered at greater length in the next chapter.

D. Civil and political rights in areas controlled by the Government

61. In all situations such as the one prevailing in Afghanistan, the world community, and in particular non-governmental organizations (in this case Amnesty International and Asia Watch), are especially interested in the question of personal liberty and security. It should be recalled in this regard that the fate of at least 47,000 persons who were reported as missing within the meaning of the United Nations criteria since the period 1978-1980 has still not been clarified and it would appear that no effective attempts are being made to discover their fate.

62. There are two groups of prisoners besides common law prisoners who may be considered as political prisoners within the meaning of United Nations criteria used in similar situations. As regards the policy of apartheid, United Nations experts have developed a concept of what constitutes a political prisoner, first with regard to Namibia and later on with regard to South Africa. According to this concept, a political prisoner is a person whose actions have served a political goal which goes against official policy of a given Government. There ought to be a certain proportionality between the aim and the act by which this political aim is intended to be achieved. Even when such acts threaten private individuals or inflict damage on property which is not linked to the Government in any way, such acts may be considered as political acts and the prisoners taken in this connection can be considered as political prisoners. This criterion also applies to persons who are considered to be terrorists under national laws, as is the case in Afghanistan.

63. The two categories of political prisoner are convicted prisoners and those who have not been convicted. In the latter category are persons under interrogation, those who are awaiting trial or who are awaiting sentencing. At present, the total number of convicted prisoners in the country is 4,685, of whom 2,860 are political prisoners and 1,825 are common law prisoners. The exact breakdown of these numbers by province and category is reproduced in annex IV to the present report. They are detained under the authority of the Ministry of the Interior.

64. In addition, there are currently 436 prisoners who are awaiting sentencing in Kabul, 358 in Blocks 1 and 2 at Pol-i-Charkhi central jail and the remainder in the General Directorate for Investigation in Sedarat. There were 101 prisoners in Block 1 and 257 in Block 2. Out of the total number of prisoners at Pol-i-Charkhi, 115 were awaiting trial in the second instance, 20 were under interrogation, while 200 were awaiting a final decision of the court. Among these prisoners there were 15 foreigners of whom 10 were Pakistani and 5 Iranian. The exact breakdown of these numbers by province and category is reproduced in annex V to the present report. These prisoners are under the authority of the Ministry of State Security.

65. During a discussion with the President of Afghanistan the Special Rapporteur was informed that since the launching of the policy of national reconciliation, 20,518 prisoners have been released by presidential decrees in accordance with article 75, point 8, of the Afghan Constitution which empowers the President of the Republic to pardon and remit sentences. However, the figure of over 20,000 prisoners released through different amnesty decrees over the years has to be viewed in conjunction with numerous new arrests and occasional re-arrests which balance out to a considerable extent the number of releases.

66. According to the information provided by the Ministry of the Interior, during the period 21 March to 27 December 1991, 1,355 prisoners were released of whom 574 were political prisoners. On 27 December 1991, 100 political prisoners were freed as a result of a unilateral and unconditional measure taken by the President. The President of the Republic indicated that a similar gesture of unconditional release of prisoners by the opposition forces would be welcome. The members of the Commission in charge of supervising the situation of prisoners drew the Special Rapporteur's attention to article 75, point 8, of the Constitution which empowers the President "to pardon and remit sentences". It would also appear that the President has discretionary power to establish the criteria for granting pardon to prisoners.

67. The Special Rapporteur is particularly grateful that after intervening on behalf of a prisoner at the direct request of his parents, the President of the Republic availed himself of the power accorded to him under article 75 of the Constitution to order the release of Zamaryalai Melgerai, son of Professor Fakir Mohammed Melgerai, without any bureaucratic procedures. The Special Rapporteur received the former prisoner at his hotel and immediately took him to his parents.

68. The Special Rapporteur informed the General Assembly at its forty-sixth session about the death penalty to which 97 persons were sentenced, in the

context of their alleged involvement in the attempted coup d'état of March 1990. The General Assembly, in its resolution 46/136, appealed to the Afghan authorities to commute these death sentences. The Special Rapporteur made an appeal to the same effect, both orally and in writing, to the President of the Republic during a meeting. The President responded favourably to this appeal, adding all prisoners who had been sentenced to capital punishment at that time to the list of persons whose sentence would be commuted, i.e. 114 persons in all. The Special Rapporteur expressed the hope that all 114 death sentences would be commuted officially in the near future.

69. The Special Rapporteur was subsequently informed by note verbale that the President of the Republic had issued amnesty decree No. 1355 concerning the limitation of the application of the death sentence, stating that:

> "in accordance with paragraph 8 of article 75 of the Constitution of the Republic of Afghanistan, the persons condemned to death for their participation in the attempted coup d'état of March 1990 will be able to benefit from a commutation of their death sentence to 20 years' rigorous imprisonment".

70. In addition, the Special Rapporteur was informed by note verbale that:

> "President Najibullah has signed a decree about the limitation of the death sentence. According to his decree, the death sentence can not be applied except in the following cases: intentional murder, massacre, explosion of explosives accompanied with killing, highway robbery with murder, crimes as a result of which the territory of Afghanistan totally or partially will come under the sovereignty of a foreign state and to jeopardize the territorial integrity and independence of the country. In other cases, the death sentence be amended to 20 years' imprisonment. The decree is effective from January 15, 1992."

71. In addition, the Special Rapporteur was informed by note verbale dated 3 February 1992 that:

> "Esteemed Najibullah, President of the Republic of Afghanistan, has given a positive answer in accordance with your request to commute the death penalty of the insurgents of the coup d'état of March 1990 into a prison sentence, as discussed during your visit.
>
> "The Presidential Bureau herewith certifies that through Decree No. 1355 dated 8/11/70 (28 January 1992) the death sentence of the aforementioned insurgents has been commuted into 20 years' imprisonment."

72. The Special Rapporteur has received oral confirmation that all 114 persons against whom death sentences had been imposed were covered by the above decrees.

73. The Special Rapporteur has also received information from persons who were in one way or another involved in the attempted coup d'état of March 1990. Some of them are convicted prisoners or have appealed for pardon; others have taken refuge in foreign countries. Some of them have stated that

they had been ill-treated. The most common method of ill-treatment was to force a person to stand against a wall, in complete isolation; sleep deprivation and the use of strong electric lights during interrogation were also reported.

74. As indicated in the Special Rapporteur's interim report to the General Assembly, a new unified judicial system was established in March 1991 which nominally removes jurisdiction over cases concerning internal and external security as well as military matters from the influence of the political party. It is hoped that the new unified court and attorney system (A/46/606, paras. 71-72) and the establishment of a High Court of Appeal together with the system of providing legal aid will definitively eradicate the practice of torture. In addition, the First Deputy Minister for State Security has informed the Special Rapporteur that in the future there should be only two detention centres in Kabul for prisoners in detention on remand where interrogation would take place: Blocks 1 and 2 of Pol-i-Charkhi prison and the General Directorate for Investigation located in Sedarat. The Ministry of State Security has also indicated that it has 10 detention centres in the provinces, namely in Baghlan, Balkh, Farah, Ghazni, Herat, Kandahar, Kunduz, Nangarhar, Paktia and Parvan.

75. During his last mission the Special Rapporteur was informed by the Minister of the Interior, the Deputy Minister for Foreign Affairs and the President of the Republic that the International Committee of the Red Cross (ICRC) would be allowed to visit detention centres under the supervision of the Ministry for State Security, both in Kabul and in the provinces, and to interview detainees in accordance with the rules of the ICRC, i.e. without witnesses. The obstacle for carrying out such visits in the past used to be the mandatory presence of a representative of the Attorney General's office. This requirement now appears to have been removed. The readiness of the Afghan authorities to open these interrogation centres in Kabul and in the provinces has also been confirmed by the International Committee of the Red Cross. The law in this respect has not been changed but the former administrative practice has been abandoned. At the time of the finalization of the present report, the Special Rapporteur was informed that the International Committee of the Red Cross had been able to visit Blocks 1 and 2 at Pol-i-Charkhi prison and is currently carrying out similar visits in Farah province.

76. The Special Rapporteur has once again visited Pol-i-Charkhi prison which had 2,688 prisoners at the time of his visit. He was informed that between September and December 1991, 469 persons had been released through 86 individual and 2 general amnesty decrees. Out of the total, 55 were persons over 60 years of age, 40 had incurable illnesses and 26 were handicapped. An additional 100 political prisoners were pardoned by presidential decree on 27 December 1991 and are said to have been released. Since September 1991, 176 new inmates had arrived at the prison.

77. A new system of prisoner representation before the prison authorities has been introduced. Each wing may elect one representative to voice the grievances of the prisoners. At present there are 32 wings at Pol-i-Charkhi with 32 representatives. They present prisoners' complaints concerning their

daily life in prison. The Special Rapporteur selected five representatives from among the 32 wings including the one representing foreign prisoners. He was able to discuss their problems with them freely without the presence of prison authorities. The problems discussed were mainly related to prison conditions. Reference was made to insufficient blankets during the winter season, electric power cuts and occasional shortages of water in differnt wings, as well as to inappropriate medical facilities. Two prisoners claimed that they had been re-arrested on the same charges shortly after being released and were brought back to Pol-i-Charkhi. The Special Rapporteur promised to bring their cases to the attention of the authorities.

78. The Special Rapporteur was also able to meet two prisoners who had been sentenced to capital punishment. They informed him about the conditions of their custody and the ill-treatment they had undergone after their arrest.

79. The Special Rapporteur was informed by one of the inmates he was able to see in September 1991 that the inmates had not been subjected to any harassment after the visit. However, the prisoner stated that he was told that he would receive "special treatment" if he were to attempt again to forward a letter to the press about prison conditions without previously submitting it to the prison authorities for inspection. Such treatment meant being kept in a toilet for a certain period or the harassment of family members when they come to visit. Concerning this allegation, the Special Rapporteur would like to state that even under the system governed by the European Convention on Human Rights and Fundamental Freedoms, prison correspondence is subject to certain restrictions.

80. A Commission in charge of supervising the situation of prisoners has been established and is composed of high-ranking government officials who are familiar with the law and prison conditions (see annex VI). The Commission, whose rules of procedure have been regulated by presidential decree, is authorized, inter alia, to examine the situation of convicted prisoners, ensuring that investigations have been completed, as well as that of persons under judicial investigation. The Special Rapporteur was informed that the Commission had adopted as its guidelines the United Nations Standard Minimum Rules for the Treatment of Prisoners. Since its establishment members of the Commission have carried out five visits to Pol-i-Charkhi prison, two to other detention centres, two to women's prisons and two to the Juvenile Rehabilitation Centre. The Commission is also competent to deal with complaints. It has so far received 825 petitions, some of which concern requests to review sentences while others concern prison conditions. The latter complaints are largely similar to those voiced before the Special Rapporteur by the representatives of prison wings at Pol-i-Charkhi. A presidential order urges all governmental agencies to cooperate with this Commission. The Commission evaluated the conditions prevailing in Pol-i-Charkhi prison more positively than had the Special Rapporteur. Members of the Commission appealed to the Special Rapporteur to invite the international community to assist the Afghan Government in rebuilding the Dar-el-Tadib Juvenile Rehabilitation Centre. In view of the fact that the Special Rapporteur is acquainted with the deplorable state of the aforementioned premises, he responded favourably to this request.

81. An important issue concerning political prisoners under interrogation has to do with the length of detention on remand. The Special Rapporteur has discussed this matter with the Chief Justice and the President and members of the High Court of Appeal. The prolongation of this type of detention by investigative organs is no longer decided upon by the Ministry of State Security or the Attorney General's Office - which are under the authority of political bodies - but is now dealt with by courts. The Chief Justice and the President of the High Court of Appeal also informed the Special Rapporteur that detainees could raise the problem of ill-treatment at any time. As examples, they cited four cases in which allegations of ill-treatment during interrogation had been investigated and the interrogation officers prosecuted and punished accordingly. The Special Rapporteur subsequently received from the Afghan authorities a summarized account of the four cases.

82. The persons who were subjected to torture whose cases were submitted to the Special Rapporteur had been prosecuted in connection with bomb explosions and kidnapping. The case involving a member of the Muslim clergy did not specify the offence. The communication of the Afghan authorities stated that all the interrogation officers who had tortured the aforementioned persons were found guilty by the courts and were punished in accordance with article 42 of the Constitution as well as articles 78 of the Penal Code and 275 to 279 of the Penal Procedural Code.

83. The Afghan Government has authorized a demonstration organized by the supporters of former king Zaher Shah which took place in Kabul on 13 November 1991. It was the first of its kind since 1985. However, a counter-demonstration was organized on the same day by the opponents of the former king who are alleged to have attempted to disturb the first gathering. The Minister of the Interior informed the Special Rapporteur that the authorities did not intervene in either demonstration and that no one was arrested. He explained that since democracy and pluralism prevailed in the country the authorities felt that they should not interfere as there were no clashes and since this could be interpreted as favouring one of the parties. The Special Rapporteur is of the opinion that the right of peaceful assembly, as enshrined in article 50 of the Afghan Constitution and in article 21 of the International Covenant on Civil and Political Rights, also requires that the authorities protect a peaceful assembly whose organization has been authorized against those who try to prevent the exercise of the right to peaceful assembly.

84. The Special Rapporteur was informed that the Association of Afghan Lawyers had undertaken to establish and draft the charter and statutes of a commission on human rights of Afghanistan and a 31-member drafting committee has been set up to that effect. At the time of the Special Rapporteur's visit the relevant texts had not been agreed upon. It had also not yet been decided whether the Afghan Commission on Human Rights would be an independent non-governmental organization, a para-statal body or have functions similar to those of an ombudsman.

E. Economic, social and cultural rights

85. The enjoyment of economic, social and cultural rights in Afghanistan can only be viewed against the background of the prevailing situation of war.

Anyone who is acquainted with the country is aware that the disintegration of the Afghan society and the large number of refugees and displaced persons cannot contribute to an organized labour system. Trade has been hampered by the difficulties related to the safety of transport connections, especially land traffic, and tourism has ceased to be a source of income. The economic infrastructure concerning agriculture allows for the existence of only a very small domestic market. The only economic assistance in the areas not controlled by the Government is provided by non-governmental and intergovernmental organizations, but this is geared principally towards reconstruction rather than economic development. The situation in Government-controlled areas is better in that efforts to develop the economy are at least implemented in a systematic manner. The price lists of consumer goods in various parts of the country which are regularly published in the Monthly Bulletin of the Afghan Information Centre show a dramatic decline in the value of the Afghan currency. The issue of currency falls within the competence of the President, who, under article 75, paragraph 13, of the Constitution has the right "to authorize the issuance of money and monetary reform, in accordance with the law". An expert has correctly remarked that "the capacity of the economy to absorb currency while production is stagnant or dropping is not unlimited". Nevertheless, persons employed by the Government (according to some estimates, this may comprise up to 80 per cent of the population in Kabul) receive coupons for food and other basic commodities which enable them to acquire these staple goods for free or at fixed prices.

86. The information provided by the Afghan Government to the Committee on Economic, Social and Cultural Rights (E/1984/6/Add.12 and E/1990/5/Add.8) has been considered by the Committee as "unduly legalistic since it did not provide data on the practical implementation of the provisions of the Covenant or on the true situation in Afghanistan with regard to the enjoyment of the economic, social and cultural rights" (E/C.12/1991/CRP.1/Add.1, para. 38).

87. During his last visit to the country, the Special Rapporteur had the opportunity to discuss these matters with the Minister of Labour and Social Affairs who provided him with detailed information about the Labour Code, the equality of rights, the position of women, the situation of children and orphans and handicapped persons, the handling of social affairs and the efforts made to fight against production and use of narcotic substances. The Minister stated that there were 200,000 civil servants of whom around 70,000 were employed in the private informal sector.

88. In areas under the control of the Government, reality is thought to be in keeping with the laws to a considerable extent, which is not the case in areas controlled by the opposition, where a democratic, social, economic and administrative infrastructure appears to be lacking. This infrastructure is said to have been completely destroyed in Khost, Kunduz and Laghman.

F. Self-determination

89. Self-determination is the right of all peoples. The entire population of a State is entitled to enjoy this right. The exercise of the right to self-determination depends on the actual situation in which the people live.

For refugees, self-determination primarily means to be free in their determination to return to their homes. Territoral self-determination is not an issue to be decided by the Afghan people; self-determination in the Afghan context is the right to internal self-determination, to determine the political status of the people and to pursue economic, social and cultural development.

90. A primary condition for the exercise of the right to self-determination by the Afghan people so that the whole population may be and is considered as a "people" within the meaning of article 1 of the International Covenants on Human Rights, is the return of refugees to their homeland. This return depends mainly on the actual and not the legal conditions with regard to the situation prevailing in the country. This implies law and order, a functioning administration and the reconstruction of the country, or at least a move towards reconstruction. The will to initiate reconstruction would constitute an element of self-determination.

91. The free elections foreseen in the Afghan Constitution, in the various joint statements and communiqués and in the texts of United Nations human rights instruments are a further means of achieving self-determination and may constitute the ultimate expression of the will to exercise this right. It is therefore understandable that all the forces striving for a political solution of the Afghan conflict advocate the holding of free elections. From an international point of view, free elections could be equated to a political solution.

92. But how is this point to be reached when opinions are so divided? It seems, however, that a certain amount of progress towards free elections and self-determination was made in 1991. All parties to the conflict appear to agree that a precondition to self-determination ought to be a general gathering of the representatives of all segments of Afghan society. It is only at a gathering of this type that a decision may be reached that would signify a step in the direction of general elections. Such a gathering would be fruitful only if it were to not neglect the field of human rights: cessation of armed hostilities, the release of prisoners, no new arrests and incarcerations, no executions as a result of military, judicial or political action, as well as the formulation of a programme that would be conducive to the holding of general elections. The exercise of the right to self-determination is a difficult process, and should be approached step by step.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

93. The universal respect for human rights in Afghanistan, which has been divided into different parts controlled by the Government, different opposition parties and field commanders, depends on a political solution of the conflict which has prevailed in the country since the withdrawal of Soviet troops in 1989. Only a political solution that would result in the creation of a generally accepted and recognized central authority would establish the necessary conditions for guaranteeing the most fundamental rights to the population throughout the country: the right to self-determination, the right to life and, consequently, the entire set of human rights which are enshrined in the Afghan Constitution as well as in international human rights instruments to which Afghanistan is a party.

94. The year 1991 marked important advances towards a political solution: the five-point peace plan presented by the Secretary-General on which all political groups and the Governments concerned have agreed in principle, the joint declarations of Islamabad and Tehran, the joint statement of the United States of America and the Union of Soviet Socialist Republics of 13 September 1991 concerning the simultaneous cut-off of arms deliveries to all Afghan parties by 1 January 1992 ("negative symmetry"), the joint statement issued by the Soviet Union, the Russian Federation and the Afghan mujahidin on 15 November 1991, the joint communiqué issued by the Russian Federation and Pakistan on 22 December 1991 and, finally, the resolution on Afghanistan adopted by the Organization of the Islamic Conference in December 1991.

95. Although none of these texts explicitly mentions the guarantee of human rights as a goal to be attained, all of them contain important human rights elements: the return of refugees, the exercise of the right to self-determination, the release of prisoners as an expression of the right to the liberty and security of the person. It may be argued that the advocates of a political solution are also implying that this solution would comprise the restoration of human rights.

96. However, the conditions for the restoration of human rights have not been fulfilled. The situation of more than 5 million Afghan refugees has remained unchanged despite the efforts made by the Governments of Pakistan and the Islamic Republic of Iran in cooperation with international organizations aimed at facilitating the return of refugees, and despite the efforts made by the Government of Afghanistan to reintegrate returnees into the society. (According to the Ministry for Repatriates Affairs, approximately 57,000 persons have returned since March 1991.) The instability in the country, the fighting between the opposition forces and those belonging to the Government, the fighting among the opposition groups, the use of heavy artillery and sophisticated weapon systems, the slow progress being made in de-mining and the lack of what they consider to be a genuinely Islamic Government are some of the reasons why refugees are not going back.

97. The armed conflict between the Afghan Government and opposition forces has continued throughout 1991. Khost, Jalalabad and Ghazni were the most

coveted cities which opposition forces have attacked with sophisticated weapons while the Government has defended its positions by occasionally retaliating in an indiscriminate manner. The destruction of military and civilian targets has occasioned heavy losses among the civilian population. Four hundred civilians are reported to have been killed in Jalalabad alone. The guns have remained silent in Afghanistan since 1 January 1992 when the "negative symmetry" agreement reached between the United States and the Soviet Union entered into force. The Special Rapporteur has been unable to ascertain whether negative symmetry has also been applied by other States in the region.

98. Terrorist attacks within the meaning of the Additional Protocol I to the Geneva Conventions have continued throughout 1991, resulting in the death of numerous civilians. The Special Rapporteur deplores the manner in which opposition forces have marked the anniversary of the entry of Soviet troops into Afghanistan: 17 persons were killed in rocket attacks on Kabul, Herat and Kandahar on 27 December 1991.

99. The continued fighting among opposition groups has also resulted in numerous casualties. There is growing unrest in areas not controlled by the Government and among the refugee population living in Pakistan. Numerous assassinations and abductions that have never been elucidated have also been reported.

100. The number of political prisoners in Afghanistan has remained stable, averaging approximately 2,500 persons. The fact that more than 20,000 persons are reported to have been released since the launching of the national reconciliation policy cannot disguise the fact that many persons have been imprisoned during the same period. For example, 469 prisoners have been released since September 1991. However, 176 persons have been incarcerated in the course of the same period. The Special Rapporteur has noted that the less conventional method of granting amnesties appears to be more conducive to the release of prisoners than new trials that would result in their acquittal.

101. The Afghan authorities have adopted a more liberal approach in their policy concerning capital punishment. In this connection, the President of the Republic responded favourably to the Special Rapporteur's appeal in conformity with General Assembly resolution 46/136 to commute the death sentences imposed on the persons who allegedly participated in the attempted coup d'état of March 1990. He subsequently issued a decree which entered into force on 15 January 1992 limiting the number of cases in which the death penalty may be applied. The death sentence of the persons who were allegedly involved in the attempted coup d'état has been commuted to 20 years' imprisonment. In addition, the Special Rapporteur was informed that the aforementioned decree applied to all persons who had been sentenced to capital punishment, which means that a total of 114 death sentences have been commuted.

102. The judicial system has been changed into a unified one whereby the notorious system of special courts has been abolished. However, chambers dealing with internal and external security as well as military issues continue to exist and have been incorporated into the system of ordinary courts. The system governing attorneys has also been modified. However, the Special Rapporteur has been unable to verify how this new judicial system functions and whether it guarantees a fair trial.

103. Detention on remand remains a critical stage with regard to personal liberty and security, especially with regard to the possibility for detainees to avail themselves of the services of freely chosen defence counsel throughout the period of interrogation. The newly established Commission for Legal Assistance can contribute to the improvement of the position of prisoners detained on remand. However, if the independence of lawyers is not guaranteed, the new system of providing legal assistance will continue to depend on the Government.

104. The duration of detention on remand continues to be unreasonably long. The process of interrogation still appears not to be devoid of ill-treatment: persons who have allegedly taken part in the attempted coup d'état reported to the Special Rapporteur that they had been deprived of sleep and were forced to stand against a wall in complete isolation. The Special Rapporteur welcomes the authorization given to the International Committee of the Red Cross to visit prisoners detained by the Ministry of State Security. The Special Rapporteur was informed by the same Ministry that the detention centres in Kabul where interrogations may take place have now been limited to two.

105. On the other hand, it is difficult to gain access to prisoners held by opposition forces. It would appear that prisoners of war who are high-ranking officers are treated in conformity with the Third Geneva Convention. The Special Rapporteur was unable to find out how low-ranking soldiers were treated. The Special Rapporteur was informed that persons belonging to the Secret Police were separated from the other prisoners. At present, the International Committee of the Red Cross does not have systematic access to prisoners held by opposition forces. In addition, the fate of Soviet prisoners of war, which represents a particular international concern, has not been elucidated.

106. Prisoners are often used as hostages in political bargaining. Decisions concerning the prisoners to be exchanged and the time of the exchange are made in a rather arbitrary manner. It would appear that age and state of health are among the criteria for release taken into account by the Government. A United States citizen who had been abducted by opposition forces was recently released after a long period.

107. The Government has tried to improve the living conditions of convicted prisoners. The Special Rapporteur welcomes the establishment of the Commission in charge of supervising the situation of prisoners within the framework of the Office of the Chief Justice whose task is the constant supervision of prison conditions. Nevertheless, shortcomings such as inadequate food, power cuts, lack of running water, heating and insufficient blankets during the winter period were brought to the attention of the Special Rapporteur.

108. The premises of the Juvenile Rehabilitation Centre (Dar-el-Tadib) are in urgent need of complete renovation or rebuilding.

109. The enjoyment of other civil and political rights depends on the prevailing situation of war and unrest and the efforts of the Government to maintain law and order in the country. It would appear that the attempted coup d'état has resulted in the silencing of a considerable portion of the

Khalq faction of the Watan party (formerly the People's Democratic Party of Afghanistan). The citizenship of the former King Zaher Shah and 23 members of the royal family has been restored. Authorities have reportedly not intervened in a demonstration in favour of the former King organized by his supporters. However, they have allegedly also not intervened in demonstrations organized by the former King's opponents who are said to have attacked his supporters.

110. The effective enjoyment of economic, social and cultural rights is particularly difficult during the winter season. The United States has provided assistance in the amount of US$ 80 million for reconstruction and food distribution in those areas not controlled by the Government where a certain administrative structure exists. Purchases of food from the former Soviet Union are paid for in convertible currency. Afghan and Indian traders have received authorization from the competent Afghan authorities to import fuel, sugar and wheat from India and the former Central Asian Republics of the Soviet Union. The rate of inflation is controlled by the President who is empowered to decide monetary policy. The hundreds of thousands of persons employed by the Government receive salaries and their basic needs are provided for.

111. As indicated by the United Nations Committee on Economic, Social and Cultural Rights, however well formulated the legal provisions concerning economic, social and cultural rights may be, particularly with regard to women and children, they are not reflected in the reality prevailing on the whole of the country's territory. Afghan laws are respected only in areas controlled by the Government.

112. The exercise of the right to self-determination is thwarted by the increased fragmentation of the Afghan population. The different segments of Afghan society which live inside and outside the country view the exercise of the right to self-determination in a different manner and have different goals in this connection. The aim of the refugees is to return home when the conditions for doing so are appropriate. The goal of the opposition is to acquire complete power. The goal of the Government is to remain in power and to maintain law and order in the country. The goal of the United Nations is to foster the implementation the Secretary-General's five-point peace plan. These aspirations can only be achieved through a negotiated political settlement which requires the understanding and agreement of all segments of the Afghan population involved in the conflict and would be conducive to a cessation of armed hostilities. Self-determination must be achieved through a political solution which shall serve as a basis for all further action.

113. The Special Rapporteur is grateful to the Governments of Afghanistan and Pakistan for their full cooperation in assisting him to obtain the best possible insight into the situation.

B. Recommendations

114. As a political solution of the conflict is the only way to bring about peace and the full restoration of human rights in Afghanistan, the Special Rapporteur urges the international community to support, unconditionally and unequivocally, all ways and means conducive to a political solution.

115. Only a political solution can result in the realization of the right to self-determination by the fragmented Afghan population. However, a political solution requires that not only the political reality - protracted war in the country with a rapid shifting of alliances - be taken into account; it also requires the incorporation of human rights elements in this solution, namely:

(a) To create the conditions for the refugees to exercise their free will to return. These conditions are to be created by all the respective authorities, with the assistance of international organizations;

(b) The United Nations should call for the active participation, both direct and indirect, of all Member States in the de-mining process for which Afghan and Soviet mine plans should be used. Joint commissions should be created for that purpose as soon as possible;

(c) Political prisoners on all sides should be released unconditionally;

(d) All prisoners of war should be released unconditionally;

(e) Lists of all prisoners should be exchanged and their relatives should receive information through the International Committee of the Red Cross;

(f) All organized hostilities should cease. Discussions and conferences whose aim is to arrive at peace and security should be organized.

116. Regardless of when a political solution is arrived at, the following human rights measures should be envisaged:

(a) The immediate release of all former Soviet prisoners, in view of the fact that the hostilities in which the former Soviet Union was involved have legally and effectively ended. Article 118 of the Third Geneva Convention should be respected;

(b) All death sentences should be commuted and the death penalty should be abolished. The presidential decree concerning the limitation of the application of the death sentence may be considered only as the first positive step in the right direction;

(c) The competent authorities should investigate all allegations of ill-treatment of prisoners;

(d) Opposition groups should also respect the Standard Minimum Rules for the Treatment of Prisoners;

(e) The Special Rapporteur and the International Committee of the Red Cross should be allowed to visit prisoners held by opposition forces;

(f) Afghanistan should be invited to adhere to the Optional Protocol to the International Covenant on Civil and Political Rights and encouraged to apply to individual cases the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination;

(g) Effective legal steps should be taken in order to allow for the establishment of a bar association and lawyers should receive training that would enable them to defend accused persons at all stages of their prosecution.

117. Efforts aimed at elucidating the fate of the thousands of disappeared persons should not cease.

118. The international community should be called upon to contribute more effectively to the de-mining process and the rebuilding of the country's infrastructure.

119. The Special Rapporteur expresses his readiness to monitor the release of all prisoners on both sides.

120. The situation of human rights in Afghanistan should continue to be examined until a political solution is found. It is only then that the system of reporting by the Special Rapporteur could be replaced by advisory services.

Annex I

JOINT STATEMENT BY THE SOVIET UNION, THE RUSSIAN FEDERATION AND THE AFGHAN MUJAHIDIN

On the invitation of the Soviet Union and Russian Federation, Afghan Mujahidin delegation headed by Prof. Burhanuddin Rabbani, Minister of Foreign Affairs, visited Moscow from 11-15 November 1991. This was the first official visit of Afghan Mujahidin delegation to the USSR.

During the stay, Prof. Rabbani met with the Vice-President of RSFSR Alexandre Rotskoi. In the course of discussion, fruitful talks were held on the issues of political settlement in Afghanistan, problems of the Soviet POWs and Mujahidin POWs held by Kabul regime.

Professor Rabbani and his delegation also met with the former Soviet Foreign Minister, Edward Shevardnadze, now member of political consultative council of the Soviet President.

The Mujahidin delegation held official talks with the Soviet Foreign Minister Boris Pankin, Russian Foreign Minister Andrei Kozyrev, Foreign Minister of Tadjikstan H. Qayyumov, Deputy Foreign Minister of the USSR, RSFSR and Representatives of different Republics.

The delegation also had a detailed and fruitful meeting with the relatives of the Soviet POWs.

During the meeting and discussions which were held in an open and healthy atmosphere both sides were able to explain their positions.

1. The Soviet invasion of Afghanistan and its participation in the war, which brought and is bringing unlimited sufferings to the Muslim people of Afghanistan, was condemned and acknowledged as anti-constitutional acts.

2. Both sides have acknowledged the need for transfer of total state power to an Interim Islamic government in Afghanistan.

3. The Mujahidin delegation announcement that General Elections will be held in Afghanistan within a period of two years from the moment of transfer of power from Kabul regime to the Interim government. These elections will be held under the aegis of the OIC and UNO.

4. The decision about the effectiveness of all agreements signed after 1978 between the USSR and Soviet-backed Kabul Governments will be adopted by the Interim government.

5. Both sides agreed to make all possible efforts for release of the POWs. Out of their efforts for peace, Mujahidin will take measures for release of First Group of the Soviet POW before 1 January 1992. The necessary practical measures to be taken for implementation of such a decision will be carried out by a Joint Commission.

6. The Soviet side have agreed to stop all supply of Arms, Ammunition, fuel for military means and take necessary steps for their radical reduction, followed by a complete withdrawal of Soviet Army Personal from Afghanistan.

7. The Soviet Union will take necessary part in common efforts for the rehabilitation of destruction caused by the war.

8. A Joint Body will be established within a period of one month for the implementation of positions mentioned in this statement and carrying our future negotiations.

Annex II

JOINT COMMUNIQUE ISSUED BY THE GOVERNMENTS OF THE ISLAMIC REPUBLIC OF PAKISTAN AND THE RUSSIAN FEDERATION

22 December 1991

At the invitation of the Government of the Islamic Republic of Pakistan, a delegation of the Russian Federation led by Vice-President of the Russian Federation His Excellency Mr. Alexander V. Rutskoi paid a working visit to Pakistan from 19 to 22 December 1991. The visit marked the first official contact in the history of Russian-Pakistan relations.

During the visit, the delegation of the Russian Federation visited Islamabad and Lahore. Meetings and talks were held between Vice-President of the Russian Federation His Excellency Mr. A. V. Rutskoi, and President of the Islamic Republic of Pakistan, His Excellency Ghulam Ishaq Khan, the Prime Minister, His Excellency Mian Mohammad Nawaz Sharif, Senate Chairman, His Excellency Mr. Wasim Sajjad and the Secretary General of the Ministry of Foreign Affairs, His Excellency Mr. Akram Zaki. The exchanges were held in a warm, cordial and friendly atmosphere.

In the course of the meetings and talks, both sides held wide-ranging discussions on matters of mutual interest and the establishment and development of bilateral relations between Pakistan and the Russian Federation in the sphere of economy, trade, science and technology, culture and other fields. They reviewed the international situation, and, in particular, the conditions prevailing in the South Asian region. The Pakistani side expressed deep appreciation for the policy of the Russian Government, as stated by Vice-President of the Russian Federation, His Excellency Mr. A. V. Rutskoi, to develop relations with Muslim states on new principles, devoid of ideological obstacles and based on mutual respect, goodwill and mutual benefit.

The two sides expressed happiness over the establishment of diplomatic relations between the Islamic Republic of Pakistan and the Russian Federation. The two sides agreed to set up a joint commission to reaffirm and review the existing agreements and to work out new agreements. For this purpose, a draft agreement was discussed for cooperation in the political, economic, commercial, scientific, technical and cultural fields.

Mutual understanding was achieved that there existed good prospects for initiating mutually beneficial cooperation in the field of economy and trade, in particular, in the establishment of joint ventures to produce consumer goods including foodstuffs, in the field of energy, oil and gas extraction, construction of industrial and other projects. It was stated that the substantial scientific and technological potential of both countries and their rich cultural traditions created favourable opportunities for extensive exchanges in the fields of science and technology, education and culture.

The two sides agreed to conduct, on a regular basis, exchanges of delegations to discuss issues and enhance cooperation in the economic, trade, scientific, technological, and cultural fields as well as in the field of education and tourism on a commercial basis.

The two sides agreed to have regular contacts between the Russian and Pakistan parliaments. The deputies of the Russian parliament, members of the delegation, invited a delegation of Pakistani parliamentarians to visit Russia.

Agreement was also achieved with regard to contacts between their respective foreign policy and defence establishments by way of exchange of delegations and periodical consultations aimed at strengthening peace and stability in Asia and in the world at large.

Both sides called for the establishment of a nuclear-weapon-free zone in South Asia. In this context, appreciating the initiative by Pakistan, Vice-President, His Excellency Mr. A. V. Rutskoi, positively evaluated the proposal for a five nations' conference on nuclear non-proliferation in the region.

On Afghanistan, both sides reiterated their firm commitment to a speedy political settlement of the problem, and resolved to cooperate with each other for the promotion of this objective. The Vice-President of the Russian Federation, Mr. A. V. Rutskoi, declared that Russia intended to facilitate a peaceful political settlement in Afghanistan.

Both sides, consistent with the consensus resolutions adopted by the United Nations General Assembly, and with their commitment to the Geneva Accords on Afghanistan, recognized the fundamental right of the Afghan people to determine their destiny free from outside interference. They fully endorsed the initiative of the United Nations Secretary-General of 21 May 1991. Both sides welcomed the declaration adopted at the conclusion of the visit of the Afghan Mujahidin delegation to Moscow from 11 to 15 November 1991. They reaffirmed the need for a solution that ensured an independent, non-aligned and Islamic Afghanistan, at peace with its neighbours.

Recognizing the inadmissibility of using prisoners of war for political purposes, the two sides resolved to make every effort that all POWs in Afghanistan would be freed in the near future on the basis of humanitarian considerations. In this connection, Vice-President, His Excellency Mr. A. V. Rutskoi expressed his deep appreciation to the Government of Pakistan for its efforts in obtaining the release of Soviet prisoners, who had been held in the custody of the Afghan Mujahidin groups.

The two sides emphasized the need for the early voluntary return of the five million Afghan refugees living in Pakistan and Iran to their homeland in safety and honour.

The Pakistan side informed the Russian side about the deteriorating human rights conditions in Kashmir and about Pakistan's principled position on the Jammu and Kashmir dispute. The Russian side acknowledged Pakistan's position and expressed the hope that the issue would be resolved peacefully through negotiations between Pakistan and India on the basis of international agreements.

Regarding the Middle East, both sides welcomed the current peace negotiations and called for a solution in accordance with United Nations Security Council resolutions 242 and 338 and for the respect of the inalienable national rights of the Palestinian people.

Vice-President, His Excellency Mr. A. V. Rutskoi expressed thanks for the invitation extended by His Excellency Prime Minister Mohammad Nawaz Sharif to the President of the Russian Federation, His Excellency Mr. Boris N. Yeltsin and, on behalf of the President of the Russian Federation, extended invitations to His Excellency President Ghulam Ishaq Khan and His Excellency Prime Minister Mohammad Nawaz Sharif to pay official visits to the Russian Federation. The invitations were gratefully accepted and the visits would take place at mutually convenient dates.

22 Decenber 1991
Islamabad

Annex III

FLYER POSTED AROUND HAYATTABAD, KABIBIAN AND OTHER PLACES IN PESHAWAR, DATED 26 OR 27 NOVEMBER 1991

(Translation from Afghan Dari)

Young Mujahid Guerrillas of Afghanistan

To all Muslim refugees and to all those who left their country to defend the honour of their women. From what we see and know, the refugee community's Islamic character and values have taken the wrong path and we don't like this. Young girls and Afghan women walk and go freely in the streets, bazaars and to foreign organizations and they talk to foreign Jews, Nazarenes (Christians) and Magi but Islam has prohibited all such activities and declares people who indulge in such activities to be criminal and infidel. When those aforementioned people (Jews, etc.) are in contact with Muslims they bring bad luck and lead people into bad character and the wrong path. We have to stop these things and to prevent this we are going to tell all Afghans about this so it doesn't get worse. If this is not stopped, the responsible sources have the duty to stop this; they need to start quickly to stop those people who are working against the Sharia. To correct this kind of prostitution, the mujahidin will have to generally start operations. Because all of you are Muslims and have fled to defend your religion and women and to stop communism and for those reasons you have become refugees, your women shouldn't be dishonoured with contact with Jews and godless foreigners. Those who continue with all these improper contacts will just be waiting for violent results. The responsibility is on them and their improper families. To repeat the main points so that everybody understands:

1. After this, no woman or young girl should be with foreigners or work in non-Islamic organizations and even go to these places;

2. If actions are repeated, the men of the family - fathers, uncles, brothers, etc. those directly responsible for the family - will get the punishment if they don't obey this;

3. If you have problems, talk to the jihad sources and they will assist you.

This is the final request - correct your habits, otherwise, according to the Islamic code, we will resolve it.

Group of the Young Afghan Guerrilla Mujahids.

Annex IV

LIST OF PRISONS AND PRISONERS IN THE CENTRE AND IN THE PROVINCES
(Provided by the Ministry of the Interior)

No.	Name of prison	Criminal cases			Political cases			Grand Total
		Male	Female	Total	Male	Female	Total	
1	Central Jail	793	36	829	1 898	1	1 899	2 728
2	Helmand	37	3	40	34	0	34	74
3	Balkh	356	14	370	409	1	410	780
4	Nangarhar	135	17	152	140	0	140	292
5	Badghis	2	0	2	6	0	6	8
6	Jozjan	104	11	115	64	0	64	179
7	Farah	16	0	16	42	0	42	58
8	Samangan	12	0	12	5	0	5	17
9	Baghlan	47	4	51	18	0	18	66
10	Kunduz	56	3	59	72	1	73	132
11	Badakhshan	4	1	5	14	0	14	19
12	Paktia	33	0	33	6	0	6	39
13	Parvan	21	1	22	1	0	1	23
14	Herat	76	0	76	132	0	132	208
15	Faryab	22	0	22	16	0	16	38
16	Kandahar	0	0	0	0	0	0	0
17	Nimrouz	8	3	11	0	0	0	11
18	Ghazni	8	0	8	0	0	0	8
19	Ghourat	2	0	2	0	0	0	2
20	Total	1 732	93	1 825	2 837	3	2 860	4 685

Annex V

COMMUNICATIONS ISSUED BY THE GENERAL DIRECTORATE FOR INVESTIGATION OF THE MINISTRY OF STATE SECURITY OF AFGHANISTAN

A. Communication dated 8/10/1370 (29 December 1991) concerning the number of charged prisoners and condemned prisoners in two detention houses under the supervision of the Ministry of State Security in the Central Province

The Ministry of State Security has, in Kabul, two centres of detention for prisoners arrested for crimes against the internal and external security of the State:

1. The detention house of the General Directorate for Investigation;

2. Blocks 1 and 2 in the Pol-i-Charkhi jail.

The total number of prisoners in these two centres is at present 436. This total comprises both prisoners charged with crimes against the security of the State and prisoners condemned for such crimes.

In the General Directorate detention house there are 78 persons, 40 of whom are under investigation and 27 of whom have already been tried and are awaiting the sentence of the court. Eleven of these prisoners have been tried by the preliminary court and are awaiting the decision of the court of appeal. There are five foreign prisoners amongst these 78. Four are Pakistanis and one is an Iraqi citizen.

In blocks 1 and 2 of Pol-i-Charkhi there are 358 prisoners. Block 1 contains 101 prisoners, 4 of whom are condemned and 97 who are awaiting the decision of the court. In block 2 there are 257 prisoners, of whom 112 have been tried by the preliminary court but are awaiting the decision of the court of appeal, and 145 are awaiting the decision of the court. There are 16 foreign prisoners: 10 Pakistanis; 5 Iranians; and 1 Egyptian. There are also 20 prisoners who are employees of the Ministry for State Security and who are under investigation by the attorney of the Ministry.

B. Communication dated 17/9/70 (8 December 1991) concerning prisoners under the supervision of the branches of the Ministry of State Security in the provinces

There is a total of 10 detention centres belonging to the organs of the Ministry of State Security in the provinces. A total of 270 prisoners are in those centres. The breakdown by prison is as follows:

1.	Parvan	3 persons
2.	Herat	80 persons (from Farah, Nimroz and Herat, who are awaiting trial)
3.	Kandahar	12 persons

4.	Ghazni	2 persons
5.	Paktia	8 persons
6.	Nangarhar	8 persons
7.	Balkh	128 persons (from Balkh, Jowzjan, Faryab and Samangan)
8.	Kunduz	27 persons
9.	Baghlan	2 persons
10.	Farah	--

C. Communication concerning conditions in the detention houses belonging to the Ministry of State Security in the Centre and in the provinces

There are two detention centres under the supervision of the Ministry of State Security in the central province:

1. The detention centre of the General Directorate for Investigation;

2. The detention centre in Pol-i-Charkhi.

There is a total of 436 prisoners in these two detention centres who have been arrested for crimes against the internal and external security of the State.

There are 10 detention centres in the provinces:

1. Herat;
2. Farah;
3. Ghazni;
4. Kunduz;
5. Baghlan;
6. Balkh;
7. Parvan;
8. Paktia;
9. Nangarhar.
10. Kandahar

In the provinces there is a total of 270 prisoners arrested for crimes against the internal and external security of the State.

The National Reconciliation Process has, as one of its main objectives, to reinforce legitimacy and the rule of law in the country. It also aims to

reinforce the application of international standards of the Universal Declaration of Human Rights. In the light of the National Reconciliation Process, amendments and supplementary provisions have been introduced in all the laws of the country pertaining to the jails and detention centres. One can be assured today that legal and judicial order reigns in the prisons and detention centres and that the laws and standards accepted in all prisons are strictly respected and applied in our jails and detention centres.

The treatment of prisoners, whether convicted or not, is humane and in conformity with Islamic principles. During family visits, prisoners are able to reassure their families of their health. Visits are carried out according to the prison rules.

During the years of the National Reconciliation Process, representatives of the esteemed International Committee of the Red Cross (ICRC), representatives of other international organs and His Excellency, Professor F. Ermacora, Special Rapporteur of the Commission on Human Rights of the United Nations, have been able to visit the detention centres under the supervision of the Ministry of State Security and meet the prisoners in these centres.

Lately, upon a request of the International Committee of the Red Cross and as another gesture of good faith, the President of the Republic, His Excellency Dr. Najibullah, sent directives to the authorities to allow representatives of ICRC to visit the prisoners (both accused and condemned) in the detention centres under the supervision of the Ministry of State Security, under conditions set by ICRC itself, namely, free and private visits to any of the prisoners, at their own choice; access to all places of detention; repetition of visits, etc.

The organs of the Ministry of State Security hope that these visits will also permit ICRC to come forward with constructive and reasonable opinions and proposals which will, in turn, help the authorities in the Ministry to improve the situation.

Annex VI

RULES OF PROCEDURE OF THE COMMISSION IN CHARGE OF SUPERVISING THE SITUATION OF PRISONERS, AND THE REFORM OF PRISONS, IN THE COUNTRY

Chapter I. General Considerations

Article 1

These rules of procedure are enacted as a result of article 4 of order No. 119, dated 20/4/70 (11 July 1991), of the President, to examine the situation of prisoners and all persons who are kept in places where they are deprived of their freedom, such as prisons, detention places, places of custody and juvenile houses. These rules have been elaborated taking into account the Islamic Sharia, the provisions of the Constitution of Afghanistan, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the law on the application of prison sentences in the prisons and the regulations on the supervision of accused persons in detention centres.

Article 2

The term "Commission" in these rules of procedure refers to the Commission in charge of the supervision of the situation of prisoners and of the reform of prisons.

Article 3

The following are the bases of the activities of the Commission:

1. To supervise the situation of an accused person who is under interrogation, during the process of investigation;

2. To ensure that the process of investigation of the accused person has been completed;

3. To supervise the respect of the rights of the accused person during judicial investigation;

4. To oversee the health care, education and material needs of prisoners and persons in detention;

5. To supervise the organization of useful social activities for the prisoners.

6. To supervise the respect of the legal rights and privileges of prisoners and of those who have been arrested;

7. To look into the problems of prisoners and persons in detention.

Chapter II. The role and competence of the Central Commission in the provinces

Article 4

The Central Commission has the following responsibilites in the provinces:

1. To visit prisons, places of detention, places of supervision/custody and juvenile centres;

2. To enforce the legal requirement that no person is arrested, detained or put in prison without an order emanating from a legal competent authority;

3. To prevent the detention of prisoners and arrested persons in unauthorized premises;

4. To make sure that no person is arrested, detained or jailed for longer than the period of time determined;

5. To look into the complaints of prisoners and persons arrested or under supervision or detained;

6. To guarantee the right of defence of persons accused or under suspicion so that no illegal interrogation or investigation takes place;

7. To present the accused or suspect to the "legal aid" institution;

8. To supervise the right of prisoners to receive visits;

9. To look into the material needs of the prisoners and arrested persons;

10. To supervise the working conditions of the prisoners;

11. To look into the material needs of the prisoners and arrested persons;

12. To look into the health care of the prisoners and to inform the competent authorities of cases of incurable diseases or mental disorders and other illnesses;

13. To look into the application of laws and regulations pertaining to jails and detention centres;

14. To take measures to ensure the training of prisoners and persons in detention;

15. To take measures for the education and re-education of prisoners through the creation of libraries, courses, production projects and professional training projects, and to present proposals in this respect to the competent authorities;

16. To take measures to transfer as soon as possible arrested persons to the organs of investigation and trial, in agreement with the competent organs.

Article 5

The Central Commission shall report its activities and those of the provincial commissions to the legal office of the President every three months.

Each provincial commission will present a report on its activities every three months to the Central Commission.

Chapter III. Procedures and activities

Article 6

The Commission shall meet once every month and adopt decisions on matters on its agenda.

Article 7

1. The sittings shall take place at the premises of the High Court. The quorum is reached when two thirds of the members are present.

2. The decisions are taken by the majority of votes.

Article 8

The secretary of the Commission is appointed by the chairman of the Commission.

Article 9

1. In order to facilitate its work, the Commission can appoint working groups from among its members.

2. Working groups shall be composed of at least three members.

Article 10

The responsible committees shall visit prisons, detention centres, arrest centres and juvenile centres every fortnight and shall present reports to the Commission.

Article 11

Visits to the central jail shall take place in the presence of the chairman and the members of the Commission.

Article 12

The chairman of the Commission shall participate once every month in the work of the committees that visit the prisons, detention centres and juvenile centres.

Chapter IV

Article 13

The authorities supervising the places of detention are bound to apply the decisions of the Commission in the framework of the laws.

If the Central Commission considers that there have been violations of the law committed by the authorities, it will take one of the following measures:

(a) Present the violators before the competent disciplinary authorities;

(b) Propose the dismissal of the violator from his job;

(c) Present the violator before the Chief Prosecutor (in criminal cases).

Article 14

The Prosecutor's office shall present its own quarterly report on the situation of prisons to the Commission.

Article 15

The Ministries of State Security, Interior and Justice shall take all the necessary steps to facilitate the visits and the supervisory work or the Commission in prisons and places of detention.

Article 16

The Ministries of Interior and State Security shall provide the means of transport for the members of the Commission to the prisons.

Article 17

In cases of emergency, ad hoc visits of the Commission and the Committees shall be organized.

Article 18

All organs are called upon to apply the legal decisions of the Commission.

Article 19

The Commission has the right to call upon experts for advice.

Article 20

These rules of procedure shall be applicable after approval by the Chief Justice.

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